

The Honorable Senator Nan Rich
Senate Office Building, Room 226
404 South Monroe Street
Tallahassee, Florida 32399-1100

April 16, 2008

RE: SB 744 (Sexual Activities Involving Animals)

Dear Senator Rich:

I am a board certified criminal prosecutor with over 12 years experience and approximately 150 trials to my credit. I write in support of SB 744 and in order to advocate for the necessity of this new law, I will start briefly by explaining one such case I have handled recently in this jurisdiction.

In late 2006, I prosecuted the case of State of Florida v. Alan J. Yoder, Leon Circuit Case Number 2005-CF-3027. Mr. Yoder had been charged by law enforcement with Felony Animal Cruelty, though the charge if available should have been Bestiality or Sexual Activity Involving an Animal. I will not go into the disgusting facts of the case other than to say Mr. Yoder was having sexual relations with his male dog. The complainant in the case called the police when she observed Mr. Yoder fondling the dog. I will leave off further discussion by simply stating that in subsequent discussions with law enforcement, Mr. Yoder spoke freely about his regular sexual activities with his dog and said he would take the dog for a walk prior to sex to "prevent fecal impact." I have attached a copy of the probable cause (with the complainant's name omitted) so the facts can speak for themselves. As you can see, law enforcement incorrectly advised Mr. Yoder that they were investigating bestiality and that "it was a felony crime."

We did our best to pursue the Yoder case on the charge of Animal Cruelty (Fla. Stat. Section 828.12), but this charge was not the best vehicle to properly address the crimes of nature committed by this Defendant. On the charge of Felony Animal Cruelty, the prosecution is required to prove a defendant intentionally committed an act against an animal which resulted in the cruel death or excessive or repeated infliction of unnecessary pain or suffering. For Misdemeanor Animal Cruelty, the prosecution must show the person has caused the animal to be overworked, deprived of sustenance or shelter, or unnecessarily mutilates, kills or carries any animal in a cruel or inhumane manner. I can easily envision such a case of Bestiality being charged as Animal Cruelty before the trier of fact, be it a judge or a jury, and the Defense expert veterinarian testifying that although he finds "the Defendant's behavior shocking and disgusting, the animal was unharmed and otherwise well cared for." If such a case ever made it to trial, the resulting acquittal would be an easy lesson for the prosecutor to learn.

Amazing in Florida, other than the tenuous charge of Animal Cruelty, the only other means of addressing this crime of nature would be as a questionable misdemeanor offense under Fla. Stat. Section 755.01 which adopts the Common Law of England. Like most civilized nations, our legal forbearers in England understandably saw fit to address bestiality in the criminal courts. If this theory of the law were pursued in Florida, prosecutors would be left to attempt to utilize ancient English Law in our state to address this criminal conduct. Such a prosecutor would clearly have an uphill battle. Although case law provides for application of the Common Law of England in some situations, I can envision much mention of our Declaration of Independence and the fact that “we make our own laws here” during pretrial motion arguments. A resulting dismissal of the charges would be understandable under this scenario.

What we often hear in the legal realm is that “if the Florida Legislature wanted something to be a crime then they would have passed a law against it.” Litigants can rarely argue that the failure to pass a law was merely a timing or funding issue or that it would have been passed if we did not have financial troubles. If the Legislature does anything, it should use a small portion of its time to pass one of the most unanimously uncontested laws in recent history. There cannot possibly be any rational opponent of this bill.

It is unseemly that a person in Florida can knowingly sexually violate any animal of their choice and this does not, by itself, seem to be against the law without some type of creative and possibly tenuous prosecution. The most important consideration for the Committee to address, however, is the impact this crime of nature could have on humans. We need not look any further than the biological holocaust of HIV and AIDS to see that animals can transmit horrible viruses to the human population. Whether this virus was transmitted by a man having unnatural relations with a monkey or was bitten by a monkey or even cut himself while obtaining a pelt, the fact remains that bodily fluid transmission from monkey to human has caused the untimely death of 25 million men, women and children.

While the origin of HIV and AIDS is debated, those who try to make sense of matters in a world many believe is ruled by a higher power or nature find that such a holocaust could not possibly have come from more innocent origins. No one, however, can deny the proven means of transmission of HIV/AIDS via bodily fluids. Combine this with the over 120 other “zoonosi” or diseases that can cross the species line from animals to humans and we have a definite need to prohibit such behavior or else risk potentially great threats to our population. This is especially true in a age where the inconceivable is becoming conceivable. While we are working to protect against avian bird flu and whatever diseases and infirmities can be occasioned from simply visiting a petting zoo, not to stop humans from having sexual relations with animals is inconceivable. When it comes to regulations, our own Department of Health could more properly advise on the huge risks associated with the unsanitary actions of bestiality. I firmly believe that bestiality is a crime against nature that remains such whether we chose to call it that or not.

The clear status of our state law at this point is that the Florida Legislature has not prohibited bestiality in our State. Bestiality is currently legal in Florida! As shocking as this is

for the public to learn when such cases come to light, it would be even more shocking for the public to discover that a proposed bill was actually before this Senate Justice Committee and the Committee failed to take any action to move this forward. Do not make the mistake of waiting for some news-making case to occur as in the State of Washington (where a man participating in an act of bestiality was killed by acute peritonitis due to perforation of the colon) to then receive the public outcry as to why this unimaginable activity cannot be addressed for the obvious crime that it is. Please do your part to make this easy judgment call. Acting on such an uncontested issue should use minimal time and resources compared to the many other issues that remain contested or debatable before you.

Respectfully,

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cc: Criminal Justice Committee Members:

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